UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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3714	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

Gp

	Application No.	**Applicant(s)**
Office Action Summary	09/941,251	BANERJEE ET AL.
	Examiner	**Art Unit**
	David W. Duffy	3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>27 June 2007</u>.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8, 12-18, 21-33, 35-41 and 44-51* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8, 12-18, 21-33, 35-41 and 44-51* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____ .

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____ .

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

DETAILED ACTION

Status of Claims

1.   This office action is in response to the amendment filed 06/27/2007 in which

applicant amends claims 1, 3, 6, 17, 21-23, 25, 28-29, 44-47 and 51 and cancels claims

11, 19-20, 34 and 42-43. Claims 1-8, 12-18, 21-33, 35-41 and 44-51 are pending.

Claim Rejections - 35 USC § 103

2.   The text of those sections of Title 35, U.S. Code not included in this action can

be found in a prior Office action.

3.   Claims 1-3, 23-25, 47-48 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Thomas (US 5885087) in view of Sugimoto (US 6755661).

4.   In regards to claims 1, 3, 23, 25, 28 and 47, Thomas discloses a test timing

system that discloses a computerized testing device that conducts testing for a user

whereby a question is presented to the user and the time taken by the user to answer

the question is tracked and displayed and may be compared to a predetermined time

(2:5-20 and 4:45-65). Examiner contends that the constant display of the elapsed time

constitutes an alert and that the predetermined time for a question used to compare to

the elapsed time disclosed in the reference would constitute an alert threshold. Thomas

further discloses that the system may be used to practice examination skills and

improve their test taking skills (3:4-14) and that the system maintains player profiles in

order to provide a history of the user's progress including performance by subject or

topic (7:43-58). Thomas lacks explicitly disclosing that the alert schedule is based on

the profile of the user's previous performance, the relative question difficulty, and alert

thresholds and that presentation of test questions are based on levels of difficulty of the test questions and the ability of the test taker.

5.   In related prior art, Sugimoto discloses a testing system that adapts the timing of a test question when a user takes less than an allotted time on a question and provides the extra time on a later question for the user (abstract and 18:48-54). Sugimoto further discloses that profiles of the test taker are maintained, including skill level of the user (9:5-7 and fig 9, user ID and skill code), and the profile is used to determine questions presented to the test taker (917-20), a question database that includes information on the question difficulty to be related to the user's skill setting (6:5-7) and a preset time limit for each question (6:63-40), which examiner contends is analogous to an alert threshold, that is changed by the system as the user's skill is determined. One skilled in the art would recognize the advantages of providing more time on questions a user has trouble with and less time on questions the user finds easy in order to complete an exam in the allotted time with the most correct answers possible thus improving the test taker's performance and tailoring a test to a user's ability in order to help them improve incrementally.

6.   Therefore it would have been obvious to one skilled in the art at the time to have modified Thomas in view of Sugimoto to include the adaptive timing system in order to further aid the test taker in completing the test in the allotted time while giving as much time as necessary to correctly answer questions and customize the tests presented to the user's ability.

7.   In regards to claims 2, 24 and 48, Thomas discloses the system is a computer

program on a computer (3:53-65).

8.   Claims 4-5, 26-27, 49 & 50 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Thomas (US 5885087) in view of Sugimoto (US 6755661) as applied

to the claims above and further in view of admitted prior art.

9.   In regards to claims 4, 5, 26, 27, 49 and 50, the billing for services rendered is

regarded as old and well known in the art in view of the admitted prior art (see

arguments).

10.   Claims 6, 12, 29, 32-33, 35, 40-41 and 46 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Thomas (US 5885087) in view of Sugimoto (US 6755661) and

further in view of Hoehn-Saric et al. (US 5915973).

11.   In regards to claims 6, 29, 32-33 and 46, Thomas in view of Sugimoto discloses

the testing system described above for claim 1 where the system may operate over a

network, which examiner is interpreting to be an interface, with a client (3:63-65).

Thomas lacks in disclosing the use of instant messaging.

12.   In related prior art, Hoehn-Saric teaches that the administrator of a test has great

flexibility in sending and receiving messages associated with the administration of a test

(Col 6 and 8). This flexibility may include sending and responding to messages with the

test product users as quickly as the physical interconnection is capable of processing

and sending them, making them "instant messages".   One skilled in the art would

recognize the advantages of providing a messaging system that provides rapid

communication in a timed testing situation.

13.   Therefore, it would have been obvious to one of ordinary skill in the art to provide test examination system as disclosed by Thomas with messaging capability to take full advantage of the speed of the remote connection with the test product user to provide the ability to send and receive instant messages as taught by Hoehn-Saric for the purposes of distributing test evaluations to users in a more timely fashion in a time critical environment.

14.   In regards to claims 12 and 35, Thomas discloses that the score for the test is stored in permanent storage (6:38-41).

15.   In regards to claims 17 and 40, the combination discloses the system of claim 29 above where the alert of the elapsed time is constant and may be compared to a predetermined value (4:45-60). The system of Thomas displays the alert throughout the question but due to the nature of computing it would only be updated periodically as displays are not continuous.

16.   In regards to claims 18 and 41, the combination made discloses that the question timing may be compared to predetermined data. Previous timing data for the same question would be an obvious type of data to use as a predetermined time to compare the current time against, as that would be an indicator of past performance by test takers.

17.   Claims 7-8, 13, 16, 30-31, 36 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas (US 5885087) in view of Sugimoto (US 6755661) and Hoehn-Saric et al. (US 5915973) as applied to the claims above and further in view of admitted prior art.

18.   In regards to claims 7-8 and 30-31, the billing for services rendered is regarded

as old and well known in the art in view of the admitted prior art (see arguments).

19.   In regards to claims 13 and 36, that test creators may be different entities than

test administrators is regarded as old and well known in the art in view of the admitted

prior art (see arguments).

20.   In regards to claims 16 and 39, that payment for testing services would be based

on the number of people taking a test is regarded as old and well known in the art in

view of the admitted prior art (see arguments).

21.   Claims 14-15, 21-22, 37-38 and 44-45 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Thomas (US 5885087) in view of Sugimoto (US 6755661) and

Hoehn-Saric (US 5915973) as applied to claim 6 above, and further in view of Kershaw

et al. (US 5827070).

22.   In regards to claims 14 and 37, Thomas in view of Sugimoto and Hoehn-Saric

discloses the combination as made for claims 6 and 29 above. Thomas further

discloses the maintenance of testing records and comparison to ideal timing values

(6:37-50 and 4:53-60). The combination made lacks in disclosing session identification

or proctor identification to match or deliver data.

23.   In an analogous testing system, Kershaw discloses a the collection of statistical

data on all examinees taking a certain test (2:8-16) as well as the recording of a test

program id, registration id, test center id, and workstation id for each test taker in order

to provide an audit trail (73:27-74:26). One skilled in the art would recognize the

advantage of maintaining detailed records on test takers to provide accurate records to ensure that no cheating or errors occurred.

24.   Therefore it would have been obvious to one skilled in the art at the time to combine the test administration system of Kershaw with the timing and messaging system made from the combination made for claim 6 to provide a test timing system for a number of users while maintaining accurate and detailed records of the test takers.

25.   In regards to claims 15 and 38, the combination made above for claim 14 discloses the tracking of workstation and test id for each test taker. The combination made lacks in explicitly stating that the timing data is sent to the proctoring device based on a proctor id. However, it would have been obvious to base the sending of timing data on proctor id as testing centers commonly provide multiple tests simultaneously and the individual proctors would only need the timing data for the tests they are monitoring thus reducing the data traffic overhead.

26.   In regards to claims 21 and 44 and 22 and 45, the combination made above for claims 19 and 42 and 6 and 29 respectively discloses the retention of records to predict test taker performance. The combination made lacks in disclosing that the information would be used in future tests.

27.   In an analogous testing system, Kershaw discloses the retention of testing data for the creation of future tests (2:8-16). One skilled in the art would recognize the advantage of using the elapsed time of particular test questions in addition to the answers given in determining the difficulty of a question.

28.   Therefore it would have been obvious to one skilled in the art at the time to combine the test question timing data of the combination of Thomas and Sugimoto with the analysis of test data presented in Kershaw in order to better determine and tune the difficulty of standardized tests.

29.   Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kershaw in view of Thomas (US 5885087), Hoehn-Saric (US 5915973) and Sugimoto (US 6755661).

30.   Kershaw discloses a test administration system that records statistical data about test takers and identification system about each test taker (2:8-16 and 4:3-5:2). Data recorded includes session identification, test identification with several tests listed suggesting the capability for multiple tests to be presented by the system (73:35-74:27). While Kershaw does track test results for the creation of performance statistics, it lacks in explicitly stating the tracking of question timing data or instant messaging.

31.   In analogous testing system, Thomas discloses the tracking of question timing data and the comparison to predetermined time data (2:5-20 and 4:45-65). One skilled in the art would recognize the advantage of including time data in the statistics gathered by Kershaw in order to more accurately determine overall difficulty of a question as well as the notification feature in order to provide to the test takers time indication as standardized tests are time limited and keeping track of user's time is very important (4:49-51).

32.   In an analogous test administration system, Hoehn-Saric discloses that the administrator of a test has great flexibility in sending and receiving messages

associated with the administration of a test (Col 6 and 8). This flexibility may include

sending and responding to messages with the test product users as quickly as the

physical interconnection is capable of processing and sending them, making them

"instant messages".

33.   All of the component parts are known in Kershaw, Thomas and Hoehn-Saric.

The only difference is the combination of the "old elements" into a single system by

including the component parts in a single administrative system.

34.   Thus it would have been obvious to one having ordinary skill in the art to include

the instant messaging taught by Hoehn-Saric and the test question timing of Thomas

with the test administration system of Kershaw, since the operation of the instant

messaging and the question timing is not dependant on the operation of the test

administration system and the other components could be used in combination with a

test administration system to achieve the predictable results of a test administration

system with test timing and instant messaging.

35.   The combination made lacks explicitly disclosing that the alert schedule is based

on the profile of the user's previous performance, the relative question difficulty, and

alert thresholds and that presentation of test questions is based on levels of difficulty of

the test questions and the ability of the test taker.

36.   In related prior art, Sugimoto discloses a testing system that adapts the timing of

a test question when a user takes less than an allotted time on a question and provides

the extra time on a later question for the user (abstract and 18:48-54). Sugimoto further

discloses that profiles of the test taker are maintained, including skill level of the user

(9:5-7 and fig 9, user ID and skill code), and the profile is used to determine questions presented to the test taker (917-20), a question database that includes information on the question difficulty to be related to the user's skill setting (6:5-7) and a preset time limit for each question (6:63-40), which examiner contends is analogous to an alert threshold, that is changed by the system as the user's skill is determined. One skilled in the art would recognize the advantages of providing more time on questions a user has trouble with and less time on questions the user finds easy in order to complete an exam in the allotted time with the most correct answers possible thus improving the test taker's performance and tailoring a test to a user's ability in order to help them improve incrementally.

37.   Therefore it would have been obvious to one skilled in the art at the time to have modified Thomas in view of Sugimoto to include the adaptive timing system in order to further aid the test taker in completing the test in the allotted time while giving as much time as necessary to correctly answer questions and customize the tests presented to the user's ability.

Response to Arguments

38.   The examiner notes that the applicant has not adequately challenge examiner's OFFICIAL NOTICE on claims 4-5, 7-8, 13, 26-27, 30-31, 35 and 49-50. As such examiner's assertion of the common knowledge or well known in the art statement is taken to be admitted prior (see MPEP 2144.03 part C).

39.   Applicant's arguments with respect to claims 1-3, 6, 12, 14-18, 21-25, 32-33, 36-

41, 44-48 and 51 have been considered but are moot in view of the new ground(s) of

rejection.

Conclusion

40.   Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to David W. Duffy whose telephone number is (571) 272-

1574. The examiner can normally be reached on M-F 0830-1700.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DWD

/Corbett Coburn/
Primary Examiner
AU 3714